

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

2012 AUG 22 P 2:34

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

YORK AMATEUR SOFTBALL)
ASSOCIATION)
2405 Tanning Reeve Way)
Virginia Beach, VA 23453)
a Virginia Corporation)
Plaintiff,)
v.)
VIRGINIA LEGENDS ELITE SOFTBALL)
ORGANIZATION, LLC)
1215 Bainbridge Boulevard)
Chesapeake, VA 23324)
a Virginia Limited Liability Company)
and)
JEFFREY STANDISH, an Individual)
1215 Bainbridge Boulevard)
Chesapeake, VA 23324)
Defendants.)

Civil Action No.: 2:12cv475

COMPLAINT

Plaintiff YORK AMATEUR SOFTBALL ASSOCIATION (York) files this Complaint against Defendants VIRGINIA LEGENDS ELITE SOFTBALL ORGANIZATION, LLC (VLESO) and JEFFREY STANDISH (Standish) (collectively "Defendants"), and alleges as follows:

THE PARTIES

1. Plaintiff York is a corporation organized under the laws of the State of Virginia and having its principal place of business at 2405 Tanning Reeve Way, Virginia Beach, VA 23453.
2. On information and belief, Defendant VLESO is a Limited Liability Company of Virginia having a place of business at 1215 Bainbridge Boulevard, Chesapeake, VA 23324.
3. On information and belief, Defendant Standish is a resident of Virginia having an address at 2405 Tanning Reeve Way, Virginia Beach, VA 23453. On information and belief, VLESO is the alter ego of Standish and Standish makes all business decisions concerning the operations of VLESO

JURISDICTION AND VENUE

4. This is an action for trademark trademark infringement and unfair competition under the Lanham Act, Title 15, United States Code.
5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) and (b).
6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) and (c).
7. Defendants have jointly and in concert engaged in business activities and infringing activities within this judicial district sufficient to vest this Court with personal jurisdiction over Defendants.

FACTUAL BACKGROUND

YORK'S PERTINENT INTELLECTUAL PROPERTY PORTFOLIO

8. York is the owner of the Service Mark "VIRGINIA LEGENDS FASTPITCH AND DESIGN" (the VIRGINIA LEGENDS LOGO mark). This mark covers charitable fundraising services, namely, organizing and conducting fundraising events to encourage intercollegiate

athletic programs (first use anywhere and in interstate commerce October 31, 1998), and arranging and conducting athletic competitions; athletic training services; encouraging amateur sports and physical education by organizing, sanctioning, conducting, regulating and governing amateur athletic programs and activities; encouraging intercollegiate athletic programs by organizing and conducting educational programs and activities for intercollegiate athletes and alumni; entertainment in the nature of competitions in the field of fastpitch softball; providing various facilities for an array of sporting events, sports and athletic competitions and awards programs (first use anywhere and in interstate commerce June 30, 1985).

9. The VIRGINIA LEGENDS LOGO mark is the subject of U.S. Service Mark application Serial No. 85/289,785, filed in the U.S. Patent and Trademark Office (USPTO) on April 8, 2011. This application (York's application) will be published for opposition on August 21, 2012. See Exhibit 1.

10. York is also the owner of the Service Mark "VIRGINIA LEGENDS" (in standard characters) (the VIRGINIA LEGENDS standard characters mark). The mark covers charitable fundraising services, namely, organizing and conducting fundraising events to encourage intercollegiate amateur softball programs (first use anywhere and in interstate commerce October 31, 1998), and arranging and conducting amateur softball competitions; athletic training services; encouraging amateur softball and physical education by organizing, sanctioning, conducting, regulating and governing amateur softball programs and activities; encouraging intercollegiate amateur softball programs by organizing and conducting educational programs and activities for intercollegiate amateur softball players and alumni; entertainment in the nature of competitions in the field of fastpitch softball; providing various facilities for an array of

sporting events, sports and athletic competitions and awards programs excluding professional baseball (first use anywhere and in interstate commerce June 30, 1985).

11. The VIRGINIA LEGENDS standard characters mark is the subject of U.S. Service Mark application Serial No. 85/531,730, filed in the USPTO on February 2, 2012. See Exhibit 2.¹

PRIOR DEALINGS OF THE PARTIES

12. During 2009-2010, Standish was affiliated with York in that York permitted softball teams organized by Standish under the entity "Galaxy Star Events" (Galaxy) to use York's practice and training facilities. York also paid for some of Galaxy's practice equipment and practice clothing, and York also helped to fund Galaxy's tournament participation.

13. In or about September 2010, York informed Standish that it would no longer continue to associate itself with Galaxy.

DEFENDANTS' INFRINGING ACTIVITIES

14. Unbeknownst to York at the time, Standish incorporated VLESO and Defendants filed an application with the USPTO seeking registration of the mark VIRGINIA LEGENDS ELITE SOFTBALL AND DESIGN (Defendants' mark). The application was assigned Serial No. 85/198,279 (Defendants' application). See Exhibit 3.

15. York first became aware of the existence of Defendants' application when York's application was refused registration on July 19, 2011, based in part upon the existence of the earlier filed Defendants' application. See Exhibit 4 (copy of Office Action).

16. On January 13, 2012, York's Counsel mailed a certified letter to Standish (Exhibit 5) pointing out the fraudulent nature of Defendants' application, and demanded that Standish

¹ The recitation of services set forth in paragraph 10 differs from that which was set forth in the application as filed in light of an Amendment to the application filed in the USPTO on August 14, 2012. See Amendment included in Exhibit 2.

expressly abandon the application. Subsequently, on March 14, 2012, Standish filed an express abandonment of Defendants' application signing as President of VLESO. Defendants' application is now abandoned. See Exhibit 6.

17. Despite the express and voluntary abandonment of Defendants' application, Defendants continue to use marks and expressions creating a likelihood of confusion vis.a.vis York's marks in violation of York's rights.

18. In addition to infringing York's Service Marks, Defendants have also copied York's distinctive blue and white color scheme for their uniforms and other equipment. This has created additional evidence of confusion as to the origin of York's Service Marks.

19. Likelihood of confusion is further demonstrated by the results of a search of the search term "Virginia Legends" on the search engine at www.google.com. See Exhibit 7. With reference to Exhibit 7, for example, the second "hit" refers to York while the fourth "hit" refers to Defendants (print-outs of the second and fourth "hits" are included in Exhibit 7).

20. After numerous exchanges of correspondence, on July 24, 2012, York's Counsel sent Defendants' Counsel Jeffrey C. Flax a letter explaining that the 2012 softball season would end on August 8, 2012, and demanding that Defendants cease and desist from any further infringement of York's Service Marks, otherwise York would take appropriate legal action. See Exhibit 8.

21. Subsequent to the sending of the letter (Exhibit 8), York discovered that Defendants have now begun soliciting for player try-outs using the names "Legends Elite" and "VIRGINIA LEGENDS" which create a likelihood of confusion vis.a.vis York's marks.

COUNT I - TRADEMARK INFRINGEMENT

22. York repeats and realleges the allegations set forth in paragraphs 1-21.

23. Defendants' use of "VIRGINIA LEGENDS," "VIRGINIA LEGENDS ELITE SOFTBALL" and "Legends Elite" in association with their activities as well as their corporate name Virginia Legends Elite Softball Organization, LLC, concerning amateur softball create a likelihood of confusion with respect to York's marks.

24. Defendants' actions as described above constitute infringement of York's common law rights in and to its marks under 15 U.S.C. § 1125(a).

25. On information and belief, and after reasonable opportunity for further investigation or discovery, it is likely that the evidence will show that Defendants' acts of infringement have been made with full knowledge of the existence of York's marks and of York's ownership thereof. Such acts constitute willful and deliberate infringement, entitling York to enhanced damages under 15 U.S.C. § 1117 and attorneys' fees since this is an exceptional case under 15 U.S.C. § 1117.

26. As a consequence of Defendants' infringement, York has been irreparably damaged, to an extent not yet determined, and will continue to be irreparably damaged by such acts in the future unless Defendants are enjoined by this Court, pursuant to 15 U.S.C. § 1116, from committing further acts of infringement.

27. York is entitled to recover damages adequate to compensate for Defendants' infringement pursuant to 15 U.S.C. § 1117.

COUNT II - UNFAIR COMPETITION

28. York repeats and realleges the allegations set forth in paragraphs 1-27.

29. Defendants' infringement of York's marks along with their use of a copy cat color scheme constitute unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

30. Defendants' infringement of York's marks along with their use of a copy cat color scheme and their corporate name constitute unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

31. Defendants' actions constituting unfair competition are also believed to have been done with full knowledge of York's superior rights. Such acts constitute willful conduct entitling York to enhanced damages and attorneys' fees, since this is an exceptional case, under 15 U.S.C. § 1117.

32. As a consequence of Defendants' actions set forth in paragraphs 30 and 31 above, York has been irreparably damaged, to an extent not yet determined, and will continue to be irreparably damaged by such acts in the future unless this Court enjoins Defendants under 15 U.S.C. § 1116 from further committing such acts.

33. York is entitled to recover damages adequate to compensate for Defendants' acts of unfair competition under 15 U.S.C. § 1117.

PRAYER FOR RELIEF

WHEREFORE, York prays for the following relief:

- I. That the Court find that Defendants have created a likelihood of confusion in violation of 15 U.S.C. § 1125(a) through their use of the designations “VIRGINIA LEGENDS ELITE SOFTBALL,” “VIRGINIA LEGENDS,” “Legends Elite,” their corporate name, and a copy cat color scheme given York’s superior rights in and to its marks and given its prior use of the blue and white color scheme.
- II. That the Court find that Defendants have unfairly competed with York in violation of 15 U.S.C. § 1125(a) by virtue of their use of the designations “VIRGINIA LEGENDS ELITE SOFTBALL,” “VIRGINIA LEGENDS,” “Legends Elite,” their corporate name, and a copy cat color scheme given York’s superior rights in and to its marks and given its prior use of the blue and white color scheme.
- III. That the Court award York the damages for trademark infringement and unfair competition to which it is entitled under 15 U.S.C. § 1117, injunctive relief under 15 U.S.C. § 1116 including ordering VLESO to change its corporate name, its attorneys’ fees under 15 U.S.C. § 1117, and treble damages for willful infringement pursuant to 15 U.S.C. § 1117.
- IV. That York be awarded its expenses and costs incurred in the prosecution of this action as well as such other and further relief as the Court deems just.

DEMAND FOR JURY TRIAL

York hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

YORK AMATEUR SOFTBALL
ASSOCIATION

A handwritten signature in black ink, appearing to read "H. Jay Spiegel", is written over a horizontal line.

By Their Attorney

H. Jay Spiegel

Attorney for Plaintiff

Virginia Bar No. 20647

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